FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Second Appeal No. 411/2005
(Eknath Wasudeorao Saraf **VERSUS** Bhumayya Rajlingu Salewar **)**

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. Palshikar, counsel for the appellant.

CORAM : Smt. Vasanti A. Naik, J.
DATE : 26th September, 2007.

Heard the learned counsel for the appellant.

The appellant is the original plaintiff. A suit was filed by the plaintiff for possession of the suit property and for damages. It was the case of the plaintiff that the defendant had encroached upon the land belonging to the plaintiff, and therefore, the plaintiff was entitled for the possession of the same. According to the plaintiff, the suit property belonged to the father of the plaintiff and the father of the plaintiff had granted a patta of the suit property in favour of the plaintiff in the year 1949. the plaintiff claimed that the defendant had constructed a house over the portion of the land belonging to the plaintiff, specially to the extent of 846.01 Sq.Ft.

The defendant filed his written statement and pleaded that the suit filed by the plaintiff was liable to be dismissed as the plaintiff was not the owner of the suit property. The defendant denied

that he had encroached upon the plaintiff's property as pleaded by the plaintiff.

On the aforesaid pleadings of the parties, the trial Court framed the issues and on an appreciation of the evidence tendered by the parties on record, held that the plaintiff had failed to prove that the defendant had encroached on a part of the property belonging to the plaintiff. The Court held that the plaintiff could not prove that the plaintiff's father was the owner of the suit property and was in a position to execute a patta of the suit property in favour of the plaintiff. Since the trial Court held that the plaintiff had failed to prove his ownership, the trial Court dismissed the suit filed by the plaintiff for possession of the suit property.

The findings recorded by the trial Court were confirmed by the first appellate Court in an appeal filed by the plaintiff.

The Courts weighed the documents produced by the plaintiff for proving his ownership with the other oral and documentary evidence tendered by the parties on record to hold that the plaintiff had failed to prove his ownership over the suit property. The Courts concurrently held that the plaintiff had failed to prove that his father was the owner of the suit property and was entitled to execute a patta in favour of the plaintiff in the year 1949. The Courts also considered the evidence of

PW 2 Madhukar Channe and specially his admission that he had drawn the map at Exh.46 and 47 on the basis of map 'A' but map 'A' was not placed on record.

Both the Courts rightly held that the measurement carried out by PW 2 could not be said to be reliable as the visit of PW 2 to the spot was itself doubtful. Moreover, the defendant had constructed a house on the suit property in the year 1980 and the suit was filed by the plaintiff for the first time in the year 1989 to seek the removal of the encroachment.

The findings recorded by both the Courts are pure findings of fact which do not give rise to any substantial question of law. The second appeal is, therefore, dismissed with no order as to costs.

JUDGE

APTE